

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

CYNTHIA LEAL AND ELEZAR LEAL

Plaintiffs,

v.

NATIONWIDE GENERAL
INSURANCE COMPANY

Defendant.

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CIVIL ACTION NO. 5:15-cv-208

NOTICE OF REMOVAL

Defendant, Nationwide General Insurance Company (hereinafter “Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the captioned action *Cynthia Leal and Elezar Leal v. Nationwide General Insurance Company*; Cause No. 2015CVF002532D3, in the 341st District Court of Webb County, Texas.

BACKGROUND

1. Plaintiffs Cynthia and Elezar Leal (hereinafter “Plaintiffs”) initiated the present action by filing their Original Petition in Cause No. 2015CVF002532D3, in the 341st District Court of Webb County, Texas on July 24, 2015 (the “State Court Action”). *See* Plaintiffs’ Original Petition, attached as **Exhibit A**.

2. Defendant filed its Original Answer on September 21st, 2015, asserting a general denial to the claims and allegations made in Plaintiffs’ Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

II. DIVERSITY JURISDICTION

3. Pursuant to 28 U.S.C. § 1441(a) “any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” The Court has original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

4. Plaintiffs are domiciled in Webb County, Texas. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiffs are citizens of the State of Texas.

5. Nationwide General Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Columbus, Franklin County, Ohio.

8. Plaintiffs’ Original Petition states that Plaintiffs seek “monetary relief, the maximum of which is over \$100,000 but not more than \$200,000.” *See* Plaintiffs’ Original Petition, **Exhibit A**, ¶ X.

9. Plaintiffs’ Original Petition generally alleges that wind and hail damaged both the exterior and interior of their home, that the damage is covered under a policy issued by Nationwide General Insurance Company, and that a claim made on the policy was underpaid by Defendant. Plaintiffs seek compensation for actual damages, mental anguish damages, treble damages, exemplary damages, penalty interest of 18%, attorney’s fees and costs. *See Exhibit A*, ¶ **VII**. All of the Plaintiffs’ monetary claims, including the claims for penalties, exemplary damages, mental anguish damages, and attorney’s fees, are included as part of the amount in controversy. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326,

330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

10. Plaintiffs' Original Petition establishes by a preponderance of the evidence that that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

11. Removal is proper pursuant to 28 U.S.C. § 1332 as there is complete diversity between Plaintiffs and Defendant, the amount in controversy exceeds \$75,000, and Defendant is not a citizen of the state in which this case was brought.

12. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiffs through their attorney of record, and to the clerk of the 341st Judicial District Court of Webb County, Texas.

13. Pursuant to 28 USC § 1446(a) and Local Rule 81.1, all required process, pleadings, and orders in the State Court Action not otherwise specifically identified as separate exhibits have been requested and will be filed upon receipt.

(Signatures on following page)

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail, return receipt requested on this 21st day of September, 2015.

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/s/ Patrick M. Kemp

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